

MINUTES OF MARCH 18, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 18, 2013, at 7:00 p.m. in the County Council Chambers, County Administrative Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with Mr. James Sharp – Assistant County Attorney, and staff members, Mr. Lawrence Lank – Director of Planning & Zoning, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to move Case No. 11168 – Home of the Brave Foundation, Inc. under Old Business to the beginning of the meeting. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of February 4, 2013 and the Minutes of February 18, 2013 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Finding of Facts for February 4, 2013 and the Finding of Facts for February 18, 2013. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

OLD BUSINESS

Case No. 11168 – The Home of the Brave Foundation, Inc. – east of Road 633 (Griffith Lake Drive) approximately 440 feet north of Road 620 (Abbotts Pond Road). (Tax Map I.D. 1-30-2.00-13.20)

An application for a special use exception for women veteran's facility.

The Board discussed the case which has been tabled since March 4, 2013.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be tabled until April 1, 2013. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

PUBLIC HEARINGS

Case No. 11170 – Charles Aungst – north of Road 341 (Falling Point Road) south of South Dogwood Drive, being Lot 250, Section 4, within Dogwood Acres development. (Tax Map I.D. 1-34-6.00-258.00)

An application for a variance from the front yard setback requirement.

Mr. Lank presented the case. Charles Aungst was sworn in and testified requesting a variance of 6.4 feet from the 30 feet front yard setback requirement for a proposed detached carport. Mr. Lank read an email received by the Office of Planning and Zoning regarding the Application. The email was from a neighbor who did not object to the front yard variance request but wants the garage to respect the side yard setback requirement. The neighbor claimed that the house violates the side yard setback requirement.

Mr. Aungst testified that the proposed detached carport will measure 21 feet by 21 feet; that the development is a wooded grove; that when he purchased the Property the manufactured home already existed in its current location; that the new septic system was placed in the rear of the Property; that the proposed carport is needed to protect his boats from falling branches; that the placement of the manufactured home creates a unique situation as it is placed parallel to the road and leaves little space on the sides of the dwelling; that the carport can only be placed in the front yard; that the proposed carport cannot be built in strict conformity with the Sussex County Zoning Code due to the existing manufactured home and the existing septic system; that the difficulty was not created by the Applicant since the manufactured home and septic system already existed when the Applicant purchased the Property; that the variance will not alter the essential character of the neighborhood; that there are other similar carports in the neighborhood; that the carport would be located ten (10) feet from the side yard property line; that the variance will not be detrimental to public welfare; that the variance request is the least modification possible of the regulation in issue; that the carport is of a standard length; and that the variance is the minimum variance to afford relief. Mr. Aungst submitted exhibits for the Board to review.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11170 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is located in a wooded community and the Applicant needs a carport to protect his property;
2. The variance is necessary to enable reasonable use of the Property;

3. The difficulty was not created by the Applicant because the dwelling and the septic system were placed on the Property by a prior owner; and
4. The variance will not alter the essential character of the neighborhood.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11171 – Dale McCalister, First State Signs – southwest of Route 1 (Coastal Highway) approximately 1,980 feet northwest of Route 9 (Lewes Georgetown Highway). (Tax Map I.D. 3-34-5.00-96.00)

An application for a special use exception to replace an existing billboard, a variance from the square footage for a billboard, the maximum height requirement, side yard setback requirement, and a variance from the separation requirement from a billboard and from a dwelling.

Mr. Lank presented the case. Dale McCalister was sworn in to testify about the Application. Tim Willard, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a special use exception to replace an existing billboard, a variance of 15 feet from the 25 feet maximum height requirement for a billboard, a variance of 46 feet from the 50 feet side yard setback requirement for billboard, a variance of 13 feet from the 300 feet separation requirement from another billboard, a variance of 58 feet from the 300 feet separation requirement from a dwelling, a variance of 65 feet from the 300 feet separation requirement from a dwelling, and a variance of 216 square feet from the requirement of the maximum square footage of a billboard.

Mr. Willard stated that the existing 912 square-feet billboard on the Property is non-conforming and that the proposed billboard will be 816 square-feet in size and is smaller than the existing billboard.

Mr. McCalister testified that the existing billboard consists of two (2) 12 feet by 24 feet billboards on one side and one (1) 24 feet by 14 feet sign on the other side; that the billboard has been on the Property for over twenty (20) years; that the existing billboard was constructed prior to the adjoining development and trees; that the adjacent developer planted the trees blocking the billboard; that the height variance will allow better visibility to the billboard that the trees currently block; that the height variance will also allow better visibility to an existing doctor's office on the Property; that the proposed billboard will be smaller than the original billboard; that the existing billboard is 28 feet tall; that the height variance is necessary to enable reasonable use because the billboard is difficult to sell to advertisers due to the existing trees; that the creation of

the neighboring development since the billboard's existence creates a unique situation; that the variances are necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the proposed billboard will improve the neighborhood; that the variances will not alter the essential character of the neighborhood; that the proposed billboard will be a steel monopole structure; that this type of structure can withstand wind better and is a safer structure than the existing billboard; that the variances requested will not impair the development of adjacent properties; that the variances requested are the minimum variances to afford relief; that the proposed billboard will not have a substantial adverse effect to the neighboring and adjacent properties; that there are other billboards in the area; and that square footage of the billboard needs to be larger than what is allowed under the Code because the sign will be raised. Mr. McCalister submitted pictures and a letter of support to the Board for review.

The Board found that no parties appeared in support of or in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

At the conclusion of the public hearings, the Chairman referred back to this case and the Board discussed the Application. Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until April 1, 2013**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11172 – Penn Central, LLC – east of Route 1 (Ocean Highway) southeast corner of Bennett Road and Pennsylvania Avenue, being Lot 3, Block 1, within Sussex Shores development. (Tax Map I.D. 1-34-13.15-159.00)

An application for variances from the side yard and rear yard setback requirements.

Mr. Lank presented the case. Mr. Lank advised the Board that the Office of Planning and Zoning received a letter in support of the Application from Crowley Real Estate.

Carol Schultze was sworn in and testified requesting a variance of 2 feet from the 15 feet side yard setback requirement for a proposed third floor deck on Unit 1, and a variance of 5 feet from the 10 feet rear yard setback requirement for a proposed third floor screen porch on Unit 1. Ms. Schultze testified that the Board approved a previous variance on this property; that she should have asked for the variances for the proposed deck and porch at that time; that the

proposed screen porch will provide protection from the sun, which is important since she has had skin cancer; that the proposed deck will provide a view of the ocean; that the lot is non-conforming and measures 73 feet by 110 feet; that the variances are necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicant, since she did not subdivide the lot; that a deck on Unit 2 is not necessary since Unit 2 would not have a view of the ocean; that the variance is needed for Unit 1 because she could not see the ocean without the variance; that the dwelling has not yet been built; that the proposed structures meet the community setback requirements; that the variances will not alter the character of the neighborhood; that the variances requested represent the least modification of the regulations at issue; that the proposed variances will not impair the uses of neighboring properties; and that the variances are the minimum variances to necessary afford relief.

Roderick Reese was sworn in and testified in opposition to the Application. Mr. Reese testified that he owns the adjacent property known as Lot 5 which he has owned since 1996; that he is opposed to the 2 feet variance request; that the porch variance will provide a direct view into his existing outdoor shower from the proposed deck; that the Applicant is using the maximum allowable buildable space and the structure will be a big change to the character of the neighborhood; that he was unable to attend the previous hearing; and that he could see the ocean if he stood on the highest peak of his roof and looked between two (2) other houses.

The Board found that no parties appeared in support of the Application.

The Board found that one (1) party appeared in opposition to the Application.

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Rickard stated that he would move that the Board recommend denial of Variance Application No. 11172 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Applicant did not meet the standards for granting a variance;
2. The Property is not unique;
3. The variances are not necessary to enable reasonable use of the Property; and
4. The difficulty has been created by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **denied for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11173 – Ryan Smethurst – east of Manor Drive South approximately 539 feet south of Gateway Drive. (Tax Map I.D. 3-34-20.13-62.00)

An application for a variance from the required lot depth for a parcel and variances from the front yard and side yard setback requirements.

Mr. Lank presented the case. Ryan Smethurst and John Plummer were sworn in and testified requesting a variance of 20.8 feet from the 100 feet lot depth requirement for a parcel, a variance of 20 feet from the 30 feet front yard setback requirement for an existing non-conforming dwelling, a variance of 29.2 feet from the 30 feet front yard setback requirement for an existing non-conforming structure, and a variance of 2.25 feet from the 5 feet side yard setback requirement for an existing shed.

John Plummer testified that the Property is very unique; that the dwelling located on the Property is approximately 100 years old; that the sheds are over 100 years old; that a prior variance was approved for the Property in 2008; that the Property was purchased by the Applicant's grandfather in 1951; that originally the family wanted to subdivide the Property and create a four (4) lot subdivision; that the subdivision would have involved demolishing the dwelling and creating a cul-de-sac; that the Property is now being purchased by the Applicant and his cousin; that they plan to only create three (3) lots and keep the existing dwelling; that the Applicant's cousin will own Lot 1 and the Applicant will own the proposed lots 2 & 3; that the Applicant's cousin owns Lot 4 and Parcel 61 which are adjacent to the Property; that there are no plans to make any physical changes to the Property at this time; that the Applicant wants 2 lots for his children; that when a dwelling is built on proposed Lot 3 a driveway will be created to accommodate both lots from the right of way off of Manor Drive South; that the right of way was created to serve the Property when the adjacent development, Country Manor, was recorded; that the variances will not alter the character of the neighborhood because the adjacent lots are developed; that there is no detriment to the public welfare; that the variances sought are the minimum variances necessary to afford relief; and that the variances are necessary to enable reasonable use of the Property. Mr. Plummer submitted exhibits for the Board to review.

Mr. Smethurst testified that the dwelling on the Property has been a family home since 1951 and has a lot of significant to the family; that the proposed subdivision would allow the family to maintain ownership of the Property; that the setbacks in question about to lots which are owned by the family; that the right-of-way was created to serve the Property.

Mr. Plummer testified that the right-of-way is the only public access without obtaining an easement over Lot 1; that most of the variances will go away when the house is demolished; and that the new house will be built in compliance with zoning standards.

Mr. Smethurst testified that the lots proposed in the subdivision are larger than other lots in the neighborhood.

Mr. Plummer testified that the original four (4) lot subdivision was never recorded and only one (1) lot was approved to be carved out of the original parcel at that time.

William Walker was sworn in and testified in opposition to the Application. Mr. Walker testified that he is the President of the Homeowners Association of Country Manor; that he owns nearby property; that he is opposed to a 25 feet wide road being constructed in front of his dwelling; that Manor Drive South is a private road and is only a "paper road"; that the Homeowners Association maintains the road; and that he is not sure who owns the road, but believes it may be the Applicant.

Jay Benjamin Roy, Jr. was sworn in and testified in opposition to the Application. Mr. Roy testified that he lives on Manor Drive; that he is opposed to the Applicant having access through the Country Manor development; that the Homeowners Association is responsible and pay for repairs to the roads in the development; that the roads cannot withstand large heavy equipment; that he is concerned about the effect on the street; and that he has no objection to the variances.

The Board found that no parties appeared in support of the Application.

The Board found that two (2) parties appeared in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11173 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The dwelling has been on the Property for 100 years;
2. The Property is unique in shape;
3. The variances are necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances to afford relief.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11174 – Steven Purcell & Donna Purcell – north of Route 26 (Vines Creek Road) approximately 1,548 feet east of Route 327 (Dogwood Acres Road). (Tax Map I.D. 1-34-10.00-228.00)

An application for variances from the side yard and rear yard setback requirements.

Mr. Lank presented the case. Steven Purcell and Donna Purcell were sworn in and testified requesting a variance of 0.5 feet from the 15 feet side yard setback requirement and a variance of 9 feet from the 20 feet rear yard setback requirement for an existing detached garage.

Steven Purcell testified that the Applicants are seeking a variance for an addition to a garage which has been built and that the Applicants obtained a building permit for the addition.

Donna Purcell testified that the Applicants hired a builder to construct the addition to the existing detached garage; that the Applicants relied on the builder to comply with the zoning ordinance; and that they added to the front of an existing detached garage.

Steven Purcell testified that the Applicants were unaware of the encroachment until the inspection by the Planning & Zoning inspector after the addition was constructed.

Donna Purcell testified that the builder failed to follow-up with the Planning & Zoning office after the notice of violation; the Applicants purchased the Property in 2009 with a small detached garage located thereon; that the Applicants needed to expand the garage to house an additional vehicle; that the variances will enable reasonable use of the Property; that the difficulty was not created by the Applicants; that the new addition measures 28 feet by 28 feet; that there is a uniqueness to the Property since the structures already existed; that the difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood because other neighbors have large detached garages; that the variances are the minimum variances to afford relief; and that they will provide the builders address to the Planning & Zoning Office so that a letter can be sent.

The Board found that two (2) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11174 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The difficulty was not created by the Applicant;
2. The variances will not be detrimental to the public welfare;
3. The variances will not alter the essential character of the neighborhood; and

4. The variances sought are the minimum variances to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated, and that a letter be sent to the builder from counsel.** Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11175 – Stephen Levine – south of Route 1 (Coastal Highway) south of Rogers Avenue, being Lot 13, Block B, within Ann Acres development. (Tax Map I.D. 3-34-20.13-55.00)

An application for variances from the side yard and rear yard setback requirements.

Mr. Lank presented the case. Ann Kirby was sworn in and testified requesting a variance of 3.5 feet from the 5 feet side yard setback requirement and a variance of 3.7 feet from the 5 feet rear yard setback requirement for a shed; that the lot measures 50 feet by 100 feet. Ms. Kirby testified that the Property is unique because it is only fifty (50) feet wide and the existing dwelling takes up the majority of buildable space; that the shed cannot be placed in strict conformity of the setback requirements; that the variances are necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the poor design by the builder did not allow any space for storage on the Property; that the variances will not alter the character of the neighborhood; that the variances are not detrimental to the public welfare; that the shed cannot be seen by the adjacent property owners; and that the variances are the minimum variances to afford relief. Ms. Kirby submitted pictures for the Board to review.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11175 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The size of the Property is unique because it is only fifty feet wide;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The variances are necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11176 – Louis R. Sakus & Nancy S. Rakus – east of Route 1 (Coastal Highway) east of Andrew Street, being Lot 4, within Bay View Park development. (Tax Map I.D. 1-34-20.11-46.00)

An application for a variance from the side yard setback requirement.

Mr. Lank presented the case. Mr. Lank stated that the Office of Planning & Zoning received a letter in support of the Application. Louis Rakus was sworn in and testified requesting a variance of 4.9 feet from the 10 feet side yard setback requirement for a proposed elevator.

Mr. Rakus testified that he purchased the Property in 1995; that he has had three (3) back surgeries and one (1) neck surgery since purchasing the Property; that the elevator is necessary to enable reasonable use of the Property; that the living area is on the top floor; that the dwelling is built on stilts; that the Bayview Homeowners Association does not object to the elevator; that he has difficulty navigating steps as he falls easily; that the elevator cannot be constructed within the interior of the dwelling; that the proposed location is the only option; that the Property is unique since the dwelling already exists; that the elevator cannot be built in strict conformity with the zoning code; that the difficulty was not created by the Applicants; that the variance will not alter the essential character of the neighborhood; that there are other dwellings in the neighborhood with external elevators; that this variance request is the least modification possible of the regulation at issue; and that this variance is the minimum variance to afford relief.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11176 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique and the Applicant's situation is also unique;
2. The variance is necessary to enable reasonable use of the Property because the Applicant cannot build an elevator in the dwelling;
3. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Ordinance;

4. The variance will not alter the essential character of the neighborhood as there are other external elevators in the neighborhood; and
5. The variance sought is the minimum variance to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11177 – Christian Willey & Barbara Willey – south of Route 620 (Abbotts Pond Road) approximately 1,139 feet east of Route 36 (Shawnee Road). (Tax Map I.D. 1-30-5.00-79.00)

An application for a special use exception to retain a manufactured home type structure for office use and storage.

Mr. Lank presented the case. Mr. Lank stated that the Applicants were originally approved for a special use exception in July 2003 for five (5) years.

Mr. Sharp advised the Board that his firm has represented the Applicants in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

Christian Willey and Barbara Willey were sworn in and testified requesting a special use exception to retain an existing manufactured home used for an office and storage. Christian Willey testified that the Board approved the special use on July 7, 2003; that the Applicants were unaware the approval expired in 2008; that the Applicants were not aware they had to re-apply to the Board; that he hoped to be retired by now; that he is still using the unit for his office and storage for his electrician and firearms businesses; that the Property is now 3.5 acres larger; that the structure has a steel roof; that nothing has changed since the last approval; and that he is aware the approval is temporary and will have to re-apply in five years if approved.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception No. 11176 for the requested special use exception for a period of five (5) years based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for the reasons stated and for a period of five (5) years**.

Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Meeting Adjourned 9:55 p.m.